RSA No.761 of 2005

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: August 23, 2007

Gurnam Singh .... Defendant/Appellant

Versus

Ved Parkash .... Plaintiff/Respondent

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. Binderjit Singh, Advocate for the appellant.
Mr. V.K. Sandhir, Advocate for the respondent.

R.S. Madan (J).

1. The present Regular Second Appeal is directed against the judgment and decree dated 4.11.2004 passed by Additional District Judge, Bathinda in Civil Appeal No.20 of 17.07.2004 vide which the appeal of the plaintiff was accepted and the suit of the plaintiff was decreed for the recovery of Rs.1/- Lakh along with interest @ 12% per annum from the date of execution of the pronote and receipt dated 3.01.2002 till the date od decree i.e. 12.06.2004. The appellant was also entitled to future interest @ 6% per annum on the principal amount of Rs.1/- Lakh from the date of decree till its realisation.

2. In brief, the facts of the case are that the defendant/appellant Gurnam Singh raised a loan of Rs.1/- Lakh on 3.01.2002 from the plaintiff/respondent and agreed to make the payment with interest @ 2% per annum and in lieu of that the defendant/appellant thereof executed a pronote and receipt in favour of the plaintiff/respondent and received the amount. Despite of repeated requests, defendant/appellant failed to make payment of loan which led to the filing of the present suit for recovery of

Rs.1/- Lakh the along with agreed rate of interest from the date of decree till the realisation.

3. Upon notice, the defendant/appellant contested the suit, filed written statement. It was inter alia pleaded therein that pronote and reeipt are false and fabricated documents. In fact, no money was ever paid to the defendant/appellant. The plaintiff/respondent is not having money lending licence. On merits, all the averments made in the plaint were denied including cause of action and right to recover the amount. With these pleas in the written statement, defendant/appellant prayed for dismissal of the suit.

4. The controversy was set at rest by framing the following issues by the Civil Judge (Sr. Division), Talwandi Sabo :-

1. Whether defendant borrowed a sum of Rs.1,00,000/- from the plaintiff on 3.01.2002 and also executed pronote and receipt in favour of the plaintiff on that date? OPP.
2. If issue No.1 is proved, whether plaintiff is entitled to recover interest on borrowed amount, if so, at what rate? OPP.
3. Whether plaintiff is entitled to recover Rs.1,10,000/- from the defendant? OPP.
4. Whether suit of the plaintiff is within limitation? OPP.
5. Whether plaintiff is doing the job of money lender, but has not obtained any money lending licence? OPD.
6. Whether pronote and receipt are false, forged and fabricated and are without consideration? OPD.
7. Relief.

5. Both the parties adduced evidence in support of their case.

6. After evaluating the evidence led by the parties, and hearing

the learned counsel, the learned Trial Court returned the findings on all the issues except issues No.3 and 5 in favour of the plaintiff. It was observed that these pronote and receipt were duly executed by the defendant/appellant and a sum of Rs.1/- lakh was raised by the defendant/appellant as loan.

7. While disposing of issue No.1, the learned Trial Court returned the finding against the defendant by taking into consideration the various earlier transactions in which the plaintiff has filed a suit for recovery against the defendant and some other defendants on the basis of pronote and receipt. The learned lower court disagreed with the observation of the Apex Court made in **Kalcilde Wallang and others Vs. U. Lokendra Suiam 1998 Civil Court Cases 44 (SC)** where it was held that a few disconnected and isolated transactions would not make the plaintiff a money lender. The Trial Court, however, held the plaintiff/respondent as a money lender and observed that the plaintiff/respondent cannot claim the amount from the defendant under Section 3 of the Registration of the Money Lender's Act, 1938. Hence, the finding was returned against the plaintiff. Resultantly, the suit for recovery was dismissed.

8. Aggrieved by the impugned judgment and decree of the learned Trial Court, plaintiff/respondent preferred an appeal in the Court of Additional District Judge, Bathinda.

9. The First Appellate Court, however, reversed the finding on issue No.5 and observed that the plaintiff/respondent does not come within the definition of money lender. According to Section 2(9) of the Punjab Registration of Money Lenders Act by reason of occasional loans to relations, friends, or acquaintances, whether on interest or without interest and thereby he reversed the finding relying on the authorities as detailed in para No.13 of the judgment. The learned Additional District Judge accepted the appeal of the plaintiff/respondent and thus decreed the suit of

the plaintiff for the recovery of Rs.1/- lakh along with interest.

10. Aggrieved by the impugned judgment and decree, the defendant/appellant has now preferred the Regular Second Appeal before this Court.

11. Learned counsel for the parties have been heard.

12. It is contended on behalf of the appellant that the learned First Appellate Court has erred in interpreting the pleadings raised in the written statement where the defendant/appellant has raised the plea that the "plaintiff/respondent has no money lending licence". In support of his arguments, learned counsel referred to **Uttann Das Chela Sunder Das vs. Shrimonai Gurdwara Parbhandak Committee, Amritsar, 1996 (1) Apex Court Journal 629 (SC)** wherein para No.28 of the judgment of the Apex Court observed **"Court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded."** Reliance was also placed on **Narinder Nath vs. Col. Jaswant Singh, AIR 1994 Punjab and Haryana 111.**

13. Another contention of the learned counsel for the appellant is that legal plea can be raised even before Supreme Court for the first time. Reliance was placed on **Pushpa Devi Bhagat vs. Rajinder Singh & ors, 2006 (3) RCR (Civil) 480.** Learned counsel further contended that under the Income Tax Act, an amendment was made in 1984 under Section 269T Requirement as to mode of [Acceptance, payment or] repayment in certain cases to counteract evasion of Tax, which is reproduced as under:-

> No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee

cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if-

(a) the amount of the loan or deposit together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,

is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.

Explanation- For the purposes of this section,-

i. “banking company' shall have the meaning assigned to it in clause (i) of the Explanation to section 269SS;
ii. “co-operative bank” shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
iii. “loan or deposit” means any loan or deposit of money which is repayable after notice ore repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

14. Gaining strength from the aforesaid Section, learned counsel

submitted that where any transaction is to take place for more than 30,000/-, the payment has to be made through cheque or bank draft and not by way of cash. Hence any transaction which has taken place against the statute, the same is not enforceable under the law as the contract amounts to illegal contract. Even if there is no pleading to this effect in the written statement, still the Court can take judicial note of it.. Reference was made to **Smt. Kamla Bai and another vs. Arjan Singh and others, AIR 1991 Madhya Pradesh 275**.

15. On the other hand, learned counsel for the plaintiff/respondent contended that it has come in the opening lines of the plaintiff/respondent that he is a Commission Agent and is having dealings with the defendant/appellant. All transactions which stood relied by the plaintiff-firm were such transaction which were entered between them because of the business of commission agent. On the strength of this, learned counsel argued that the plaintiff could not be treated to be a money lender in terms of Section 3 of the Punjab Registration of Money Lenders Act, 1938. Reliance was also placed on **Chint Ram Sohan Lal vs. Amar Singh 1987 Punjab Legal Reports and Statutes 674.**

16. Another contention of the learned counsel was that the learned First Appellate Court after discussing the catena of authorities i.e. **Amar Singh vs. Kuldeep Singh and others AIR 1952 Punjab 207 and Sant Lal Vs. Noria Mal 1977 Punjab Law Reporter 657,** held that there there has to be a positive evidence as well as element of continuity and habit to constitute the exercise of profession or business. The certified copies of various documents Ex. D-1 to D-9 placed on the file nowhere depicts that plaintiff/respondent has been held to be a money lender. The statement of DW-1 is also silent with regard to the alleged allegations of money lender or that he has advanced loan to different persons on interest or that he is engaged in the business of money lending. Thus, according to the learned

counsel for the plaintiff/respondent the reasoning given by the First Appellate Court by observing that the plaintiff/respondent is not a money lender, which is a finding of fact and the same cannot be interfered in the Second Appeal as has been observed in **Chander Bhan (deceased) through L.Rs Vs. Gobind Ram 2004(1) ISJ (Banking) 228.**

17. After hearing the learned counsel for the parties and the law cited before me, this Court is in complete agreement with the finding of facts arrived at by the First Appellate Court on the point that the plaintiff/respondent is not a money lender and few transactions in a period of more than five years to various persons with or without interest would not bring the plaintiff/respondent within the ambit of a money lender as envisaged in Section 3 of Registration of the Money Lender's Act, 1938. So far as the law laid down in **Uttann Das Chela Sunder Das vs. Shrimonai Gurdwara Parbhandak Committee (supra)** is concerned, is not denied. Technicalities in the pleadings are not to be thrown merely on the ground that they have not been happily worded. The Court has to go to root into the substance of the pleadings. The plea raised in the preliminary objection that the plaintiff/respondent has no money lending licence was not substantive from the evidence brought on the record by the defendant.

18. The contention of the amendment made under Section 269T of the Income Tax Act is not attracted to the facts of the present case because any transaction made in cash will not make the same to be illegal contract. It is a simple case of raising of loan of Rs.1/- Lakh from the plaintiff/respondent by executing the pronote and receipt in lieu thereof and after agreeing to pay an interest @ 2% per annum. If the plea of the appellant is accepted that the transaction has to be made through draft or cheque in that case it is very easy for the defendant to first raise the laon and when the duty falls upon him to repay the same, the same transaction becomes illegal. The provisions made in Section 269T of the Income Tax

Act was amended with a view to check the tax evasion whereas in the instant case there is a dispute of repayment of loan. It is only the Income Tax authority which is empowered to deal with a situation in case the amount is not account for before the authorities.

19. Plaintiff appeared as PW but his statement cannot be taken into consideration because the same is beyond pleading. The Defendant/appellant has no doubt taken the plea that the plaintiff/respondent has no licence for money lending which is not very happily worded. At the same time, the issue No.5 to this effect was framed by the trial court. Exhibits D-1 to D-9 show that money was lent to various persons within a span of five years. These are the eight instances of money lending by the present appellant. These instances do not bring the case of the plaintiff within the definition of term of money lender. According to Section 2(9) of the Act a man does not became a money lender by rasing occasional loans to relations, friends, or acquaintances whether on interest or without interest.

20. Section 269 of the Income Taxt Act, says that every transaction beyond Rs.20,000/- has to be made through draft or cheque and not in cash. In the instant case, the money has been given in cash. There is no doubt that the plaintiff cannot take benefit of this transaction before the Income Tax authorities for the purpose of assessing the income tax. But at the same time, he has a right to recover the same. This transaction does not come within the ambit of unlawful transaction. It cannot be termed as illegal contract.

21. In this view of the matter, I do not find any infirmity in the finding of the First Appellate Court.

22. No other point was urged before this Court.

23. No substantial question of law is involved in this appeal.

24. Resultantly, this appeals fails, it is dismissed.

(R.S. Madan)
Judge

August 23, 2007
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